

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALLAN DEMAURIA,

Plaintiff,

v.

RIO CONSUMNES CORRECTIONAL
FACILITY,

Defendant.

No. 2:22-cv-0052 AC P

ORDER

Plaintiff, a county prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF No. 2. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account.

1 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
 2 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
 3 § 1915(b)(2).

4 II. Statutory Screening of Prisoner Complaints

5 The court is required to screen complaints brought by prisoners seeking relief against “a
 6 governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a).
 7 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
 8 “frivolous, malicious, or fail[] to state a claim upon which relief may be granted,” or that “seek[]
 9 monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

10 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”
 11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
 12 Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal
 13 theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,
 14 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
 15 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
 16 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
 17 Franklin, 745 F.2d at 1227-28 (citations omitted).

18 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
 19 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
 20 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550
 21 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
 22 “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
 23 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman,
 24 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
 25 to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a
 26 cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the
 27 speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain
 28 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally

1 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur
2 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

3 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
4 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
5 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
6 content that allows the court to draw the reasonable inference that the defendant is liable for the
7 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
8 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
9 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
10 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,
11 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

12 III. Complaint

13 Plaintiff alleges that defendant Rio Cosumnes Correctional Facility violated his rights
14 under the Eighth and Fourteenth Amendment. ECF No. 1. Specifically, he alleges that the
15 facility he was housed at did not follow COVID procedures, he was exposed to the virus due to
16 negligence by the deputies, prisoners did not have access to “real masks” and were unable to
17 properly disinfect their areas every day, there was no way to quarantine inmates with COVID
18 because there were so many cases, and there was no policy related to COVID. Id. at 3.

19 IV. Failure to State a Claim

20 While “municipalities and other local government units . . . [are] among those persons to
21 whom § 1983 applies,” Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 690 (1978), “a municipality
22 can be liable under § 1983 only where its policies are the ‘moving force [behind] the
23 constitutional violation,’” City of Canton v. Harris, 489 U.S. 378, 389 (1989) (alteration in
24 original) (quoting Monell, 436 U.S. at 694 and Polk County v. Dodson, 454 U.S. 312, 326
25 (1981)). There must be “a direct causal link between a municipal policy or custom and the
26 alleged constitutional deprivation.” Id. at 385. Plaintiff does not allege facts showing that the
27 conditions he complains of are the result of a policy or custom of the jail, rather than the conduct
28 of specific individuals, and the complaint fails to demonstrate any violation of plaintiff’s rights

1 given the generality of the allegations and lack of explanation as to how the conditions affected
 2 him personally. Furthermore, the lack of a COVID-specific policy, absent more, does not
 3 demonstrate a violation of plaintiff's rights.

4 If the conditions plaintiff complains of are the result of specific individuals rather than a
 5 custom or policy of the county, those individuals must be named as defendants and plaintiff must
 6 allege facts showing what each individual did or did not do that he believes violated his rights.¹

7 [T]he elements of a pretrial detainee's Fourteenth Amendment
 8 failure-to-protect claim against an individual officer are:

9 (1) The defendant made an intentional decision with respect to the
 conditions under which the plaintiff was confined;

10 (2) Those conditions put the plaintiff at substantial risk of suffering
 11 serious harm;

12 (3) The defendant did not take reasonable available measures to abate
 that risk, even though a reasonable officer in the circumstances
 13 would have appreciated the high degree of risk involved—making
 the consequences of the defendant's conduct obvious; and

14 (4) By not taking such measures, the defendant caused the plaintiff's
 15 injuries.

16 Castro v. County of Los Angeles, 833 F.3d 1060, 1071 (9th Cir. 2016).

17 V. Leave to Amend

18 The complaint does not state any cognizable claims for relief and plaintiff will be given an
 19 opportunity to file an amended complaint. If plaintiff chooses to file a first amended complaint,
 20 he must demonstrate how the conditions about which he complains resulted in a deprivation of his
 21 constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must
 22 allege in specific terms how each named defendant is involved. Arnold v. Int'l Bus. Machs.

24 ¹ Although plaintiff does not specify whether he was a pretrial detainee or convicted prisoner at
 25 the time of his incarceration at the jail, for screening purpose, the undersigned will assume that
 plaintiff was a pretrial detainee and consider the claims under the less rigorous Fourteenth
 26 Amendment standard. See Vazquez v. County of Kern, 949 F.3d 1153, 1163-64 (9th Cir. 2020)
 (“[T]he Fourteenth Amendment is more protective than the Eighth Amendment ‘because the
 27 Fourteenth Amendment prohibits *all* punishment of *pretrial detainees*, while the Eighth
 Amendment only prevents the imposition of *cruel and unusual* punishment of *convicted*
 28 *prisoners*.’” (quoting Demery v. Arpaio, 378 F.3d 1020, 1029 (9th Cir. 2004))).

1 Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983
2 unless there is some affirmative link or connection between a defendant's actions and the claimed
3 deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and
4 conclusory allegations of official participation in civil rights violations are not sufficient." Ivey v.
5 Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

6 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make
7 his first amended complaint complete. Local Rule 220 requires that an amended complaint be
8 complete in itself without reference to any prior pleading. This is because, as a general rule, an
9 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
10 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
11 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled
12 in subsequent amended complaint to preserve appeal). Once plaintiff files a first amended
13 complaint, the original complaint no longer serves any function in the case. Therefore, in an
14 amended complaint, as in an original complaint, each claim and the involvement of each
15 defendant must be sufficiently alleged.

16 VI. Plain Language Summary of this Order for a Pro Se Litigant

17 Your request to proceed in forma pauperis is granted. That means you do not have to pay
18 the entire filing fee now. You will pay it over time, out of your trust account.

19 Your complaint will not be served because the facts you alleged are not enough to state a
20 claim. You need to provide more specific information about how the conditions affected you and
21 whether the alleged violations were the result of a jail policy or the actions of individuals.

22 You may amend your complaint to try to fix these problems. Be sure to provide facts that
23 show exactly what each defendant did to violate your rights or to cause a violation of your rights.

24 If you choose to file a first amended complaint, it must include all claims you want to
25 bring. Once an amended complaint is filed, the court will not look at any information in the
26 original complaint. **Any claims and information not in the first amended complaint will not**
27 **be considered.**

28 ///

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.


3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
4 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
5 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
6 appropriate agency filed concurrently herewith.

7 3. Plaintiff's complaint fails to state a claim upon which relief may be granted, see 28
8 U.S.C. § 1915A, and will not be served.

9 4. Within thirty days from the date of service of this order, plaintiff may file an amended
10 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
11 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
12 number assigned this case and must be labeled "First Amended Complaint." Failure to file an
13 amended complaint in accordance with this order will result in a recommendation that this action
14 be dismissed.

15 5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint
16 form used in this district.

17 DATED: October 10, 2023

18 
19 ALLISON CLAIRE
20 UNITED STATES MAGISTRATE JUDGE
21
22
23
24
25
26
27
28